



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/171391

PRELIMINARY RECITALS

Pursuant to a petition filed January 12, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability ["DCHAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone from Madison, Wisconsin on March 1, 2016.

The issue for determination is whether DCHAA was correct to deny Prior Authorization ["PA"] for Speech and Language Therapy ["SLT"] for petitioner.

There appeared at that time via telephone following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED], petitioner's mother
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: [REDACTED], MA CCC-SLP, Speech-Language Pathology Consultant
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (3 years old) is a resident of Wood County, Wisconsin.
2. On or about December 3, 2015 petitioner's provider, [REDACTED], Wisconsin, requested PA for MA coverage of SLT at the rate of 2 time per week for 26 weeks for 30 minutes each time with a requested start date of December 7, 2015 at a total cost of \$6,480.00 (PA # [REDACTED] dated December 3, 2015). Exhibit #2.
3. On December 22, 2015 DCHAA denied petitioner's PA request for SLT; DCHAA sent a letter to petitioner dated December 22, 2015 and entitled *BadgerCare Plus Notice of Appeal Rights* informing him of the denial. Exhibits #1 & #2.
4. Petitioner has diagnosis of apraxia, hyperactivity, and receptive expressive language disorder. Exhibit #2.
5. Petitioner lives at home and attends school; petitioner receives SLT at school (2 sessions per week for 30 minutes each) to address his receptive and expressive language development. Exhibit #2.
6. The SLT requested by PA # [REDACTED] was to address swallowing issues (he eats too fast and chokes). Exhibits #1 & #2.
7. Petitioner is able to eat without choking or gagging when food is cut into bit sized pieces and prompts are given to take one bite at a time. Exhibit #2.

DISCUSSION

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code §§ DHS 107.01(1) & 107.18(1)(a) (August 2015); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2013-14). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December 2008). This is a denial of eligibility for services; it is not discontinuation of services. As with any eligibility denial, the burden is on petitioner to show that he is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

One of the specific requirements for *medical necessity* is that the requested service is "required to prevent, identify or treat a recipient's illness, injury or disability." Wis. Admin. Code § DHS 101.03(96m)(a) (December 2008). In this case it is not clear that petitioner requires the skills of an SLT. Petitioner currently is able to eat without choking or gagging when food is cut into bit sized pieces and prompts are given to take one bite at a time. An SLT is not necessary to accomplish this. Petitioner's SLT, who has treated him in prior SLT sessions that were approved for PA, testified that the petitioner's mother has had training and that an SLT was not necessary for that purpose. Petitioner's mother testified that petitioner needs additional SLT because he has regressed. However, there is no documentation of such regression. Petitioner may, if desired, file a new with the appropriate documentation.

CONCLUSIONS OF LAW

For the reason discussed above, OIG was correct to deny petitioner PA for SLT for petitioner.

THEREFORE, it is

ORDERED

That the petitioner for review herein be and he same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of March, 2016

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 25, 2016.

Division of Health Care Access and Accountability